IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL BAIL APPLICATION NO.2723 OF 2005
IN
CRIMINAL APPEAL NO.443 OF 2005

Shankar Punjaji Jondhale .. Applicant

v/s.

The State of Maharashtra
Through Panchvati P.Stn.,Nasik
and anr. .. Respondents

Ms.D.A.Dhamale for the applicant.

Mr.S.S.Pednekar, Addl. Public Prosecutor for the State.

CORAM : SMT.RANJANA DESAI AND
ANOOP V. MOHTA, JJ.

DATED : 17th October, 2005.

P.C.

The appellant is the original accused No.2 in Sessions Case No.46 of 2004. He was convicted alongwith the original accused No.1 under section 302 read with section 34 I.P.C. and sentenced to suffer R.I. for life. The appeal preferred by him is admitted. Today, we are considering the bail application.

2. Admittedly, there is no eye witness to the incident in question. The prosecution story is based on the circumstantial evidence. The circumstances have been noted by the learned Sessions Judge in paragraph 13 of his judgment which read thus-

> "(i) Deceased Vinod was last seen together in the company of both the accused on the fateful night.

(ii) Detection of Petrol resides on partially burnt clothes of deceased Vinod, on his pocket diary containing cash of Rs.260/- which was allegedly recovered from accused No.1 and finding of human blood on his shirt.

(iii) Seizure of Auto-Rickshaw from the possession of accused No.2 Shankar and Screw Driver from its dicky.

(iv) Subsequent conduct of accused No.1 giving false explanation about deceased Vinod.

(v) Finding of Finger print of accused No.2, one plastic bottle seized from the spot.

(vi) Motive."

3. The learned Judge has held that the motive is not proved by the prosecution. He has also held that he is not inclined to place implicit reliance on the finding of chance print of the right middle finger of the applicant on the plastic bottle found at the scene of offence. So far as finding of screw driver from the dicky of the rickshaw is concerned, the learned Judge has come to the conclusion that considering the medical evidence, this circumstance is also of no significance. It appears that the panchas have turned hostile. Since out of the six circumstances, three circumstances which were against the applicant have been disbelieved, prima facie, we feel that it is difficult to sustain the conviction on the remaining two circumstances. We are also informed that the applicant has no antecedents. Hence, we feel that he ought to be released on bail. In the circumstances, we pass the following order:-

4. The applicant Shankar Punjaji Jondhale is ordered to be released on bail in the sum of Rs.5,000/- each with one or two sureties of the like amount. While on bail, the applicant shall attend Panchvati Police Station, Nasik once in a month.

5. Application disposed of in the aforesaid terms.

(SMT.RANJANA DESAI, J.)

(ANOOP V. MOHTA, J.)